VIRGINIA LAW REGISTER.

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MISCELLANEOUS NOTES.

A PUBLIC square in a town or village treated as such for more than eighty years is held, in *Sturmer* v. *County Court* (W. Va.), 36 L. R. A. 300, to be irrevocably dedicated for public use, and the County Court is denied the power to sell such square to private persons for the erection of private buildings thereon.

THE destruction of a house by an explosion of powder caused by a stroke of lightning is held, in *German Fire Ins. Co.* v. *Roost* (Ohio), 36 L. R. A. 236, to be within the protection of a fire insurance policy which had a special clause covering damage by lightning, although in the printed part there was a provision against loss by explosion.

A PROMISSORY note, executed to an incorporated college, is held, in *Irwin* v. *Webster* (Ohio), 36 L. R. A. 239, to have a sufficient consideration in the accomplishment of the purposes of the institution—especially when this was an inducement to other donations and obligations of like character made by other persons, and to the incurring of obligations by the corporation.

A "special selling factor appointment" under which the consignee is required to pay for the goods within sixty days, whether sold or not, at an amount fixed in advance, with certain allowances for carting, storing, insuring, and selling, whether the goods are carted, stored, insured, and sold or not, and without requiring the consignee to make any account of sales or to keep the proceeds thereof separate, but giving him all the advantage or risk of the advancement or decline of prices, is held, in *Arbuckle Bros.* v. *Kirkpatrick* (Tenn.), 36 L. R. A. 285, to constitute a sale, and not a mere agency.

HOCKMAN V. HOCKMAN—LIEN OF VACATION DECREES AND JUDGMENTS BY CONFESSION.—We are in receipt of a communication from a leading practitioner of the State, calling attention to the inconvenience, not to say the injustice, of the principle, established in *Hockman* v. *Hockman*, 93 Va. 455, that the lien of a judgment by confession or a vacation decree will, by relation, take precedence over a lien by deed of trust or mortgage recorded as of the same date, although the latter is actually admitted to record before the judgment or decree is confessed or entered. The principle was criticised by the late Judge Burks, in a note to the

case, in 2 VA. LAW REGISTER, 523. Our correspondent urges us to again call public attention to the subject, and suggests that the legislature should intervene, and adopt a juster rule, and one which will more nearly conform to the convenience and necessities of business. Our readers will recall that in the case mentioned, A executed, in favor of B, a deed of trust, which was duly admitted to record at 8.30 A. M., November 9, 1892; at a later hour of the same day a vacation decree was entered and recorded against A in favor of C. The court held that the lien of the deed of trust existed only from the hour of registry, while that of the decree began with the first moment of the day, and hence was entitled to priority.

Under such a rule there can be no safety in lending money on bond and deed of trust on real estate. The lender may have examined the borrower's title ever so carefully, and the record be absolutely clear when the deed of trust securing the loan is admitted to record, yet the lender's lien is subject to be postponed to all other creditors in whose favor the debtor may see fit to confess judgment, or who obtain vacation decrees on the date of registry. Not only may the rule work injustice where all parties act in good faith, but it seems to open a most inviting field for the grossest frauds. The court probably reached a proper conclusion as to the law as it is written. But we heartily concur in the suggestion that the rule should be speedily changed, as we hope it may be by the legislature soon to assemble at Richmond.

DEFINITION OF A LAWFUL FENCE IN VIRGINIA—REVIVAL OF STATUTES.—Section 2038 of the Code of Virginia defines a lawful fence as "every fence five feet high, which, if the fence be on a mound, shall include the mound to the bottom of the ditch," etc. In numerous sections following, are contained sundry provisions with respect to trespasses by animals upon lands enclosed by a "lawful fence." By Acts 1889–90, p. 945, section 2038 was amended in several particulars and re-enacted, with the additional clause that "this act shall apply only to Orange county." Since the amended act in terms amends and re-enacts the original section 2038—the language of the amendatory act being "that section 2038 of the Virginia Code of 1887 be and the same is hereby amended and re-enacted so as to read as follows"—the effect would seem to be the complete substitution of the new act for the old, and the consequent repeal of the old section. *Com.* v. *Kenneson*, 143 Mass. 418. If so, it follows, as of course, that there remained no statutory definition of a lawful fence in Virginia, save for Orange county. This legislative slip having been brought to the attention of the subsequent legislature of 1893–4, that body, in its endeavor to remove the difficulty, seems to have completed the destruction of the definition, even for Orange county. By Acts of 1893–4, p. 948, it was declared that "chapter 585 of the session acts of 1889–90 be and the same is hereby repealed; and section 2038 of the Code of 1887 is hereby re-enacted, so far as repealed by said chapter." This is certainly sufficient to repeal the offending act of 1889–90, but the effort to revive a repealed statute by declaring that "section 2083 of the Code of 1887 is hereby re-enacted" would seem to be of no effect, under the constitutional provision that "no law shall be *revived* or amended with reference to its title, but the act *revived* or the section amended shall be re-enacted *and published at length.*" Va. Const., Art. V. sec. 15; *Lacey* v. *Palmer*, 93 Va. 159 and *ca. ci.*; *Trosper* v. *Horr*, 4 Kans. 59. After the repeal of section 2038, it could only be revived by re-enacting it and publishing it at length. Hence,

section 2038 having been repealed by Acts of 1889–90 (p. 945) and the latter repealed by Acts of 1893–4 (p. 948), without the restoration of the original section, our conclusion is that the original section has been wholly destroyed and nothing substituted in its place. Let the farmer members of the legislature make a note of the situation.

There may be some doubt, however, as to the correctness of the conclusion announced. The common law rule is that where a statute which repeals another statute is itself repealed, the original statute is thereby restored, without express words. *Com.* v. *Mott*, 21 Pick. 492; *Com.* v. *Churchill*, 2 Met. 118; *U. S.* v. *Philbrick*, 120 U. S. 52; *Van Derburgh* v. *Greenbush*, 66 N. Y. 1; 1 Minor's Inst. 46. This rule has been changed by statute in Virginia, by the provision that, "when a law which has repealed another shall itself be repealed, the previous law shall not be revived *without express words to that effect*, unless the law repealing it be passed during the same session." Virginia Code, sec. 7. As there are express words of revival in the latter repealing statute in the section under discussion, it is clear that the effect of the latter repealing statute was to restore the original section in the Code defining a lawful fence, unless the latter repealing statute offends against the constitutional provision, before mentioned, that no law shall be revived, etc., by its title, but the Act revived shall be re-enacted and published at length. There would seem to be no doubt that this provision prohibits the legislature from reviving a repealed statute by merely declaring it revived, without republishing it at length. *Trosper* v. *Horr* (*supra*). But was the constitutional provision meant to apply to the *implied* revival of repealed statutes? It is well settled that it is not applicable to *amendments* by implication. Cooley's Const. Lim. 151–2; *Anderson* v. *Com.*, 18 Gratt. 295, 300; 3 Va. Law Reg. 367. If not applicable to the *amendments* of statutes by implication, the same reasoning would render the provision inapplicable to *revival* by implication. If so, then the original section was restored, not by expressly declaring it revived, but impliedly, by repealing the repealing statute.

NEGOTIABLE PAPER — INDORSEMENT — ASSIGNMENT. — The use of the words "I hereby assign the within note" is held, in *Markey* v. *Corey* (Mich.), 36 L. R. A. 117, insufficient to prevent one who signs his name to such a statement on the back of a promissory note from being held liable as an indorser.

So "I hereby assign this note and all benefit of the money secured thereby, to John Grainger, ... and order the within-named Thomas Fox Hitchcock to pay him the amount and all interest in respect thereof," was held to be an indorsement: *Richards* v. *Frankum*, 9 Car. & P. 221; so where the holder used the words "I hereby assign all my right and title to Lewis Mickey—John Bowman." *Sears* v. *Lantz*, 47 Iowa, 658. In *Shelby* v. *Judd*, 24 Kansas, 161, it was held that the words "For value received, I hereby sell and assign all my interest in the within note, and mortgage accompanying the same, to Mrs. Mary H. Bowman—Byron Judd," constituted an indorsement and not a mere assignment. So in *Duffy* v. *O'Conner*, 7 Baxt. 498, the following was held to constitute an indorsement in the sense of the mercantile law: "For value received, I assign the within note, on condition that the property of the maker and indorsers be exhausted before recourse on me," and in *Bisbing* v. *Graham*, 14 Pa. St. 14 (53 Am. Dec. 510), a similar construction was placed upon the words "For value received, I assign to

William Graham, or order, all my right, title, and interest in the within note, without recourse." A like conclusion was reached where the payee wrote: "I this day sold and delivered to Catherine M. Adams the within note" : *Adams* v. *Blethen*, 66 Me. 19 (22 Am. Rep. 547). The following have also been held to be indorsements: "For value received I hereby assign the within bond, together with all our interest in and all our right under the mortgage securing the same, to Mary E. Merrill, without recourse"—the bond being negotiable: *Merrill* v. *Hurley*, 6 So. Dak. 592 (55 Am. St. Rep. 859); "For value received, I order the contents of this note to be paid to A. B., at his own risk" : *Rice* v. *Stearns*, 3 Mass. 225 (3 Am. Dec. 129); "For value received, we assign the within note to A. B., waiving demand and notice": *Brotherton* v. *Street* (Ind.), 24 N. E. 1068. See the subject discussed in 1 Daniel on Neg. Instr. 688 b. A contrary view is taken in *Spencer* v. *Halpern* (Ark.), 36 L. R. A. 120, where the language used was "I hereby transfer my interest in the within note." In a note to this case, in 36 L. R. A. 120, will be found a full collection of the authorities.

The kindred question as to the effect of the transfer of negotiable paper under a guaranty thereon indorsed, is discussed in *Dunham* v. *Peterson* (N. D.), 36 L. R. A. 232 and notes. See also *Central Trust Co.* v. *First Nat. Bank*, 101 U. S. 68; *Belcher* v. *Smith*, 7 Cush, 482; *Arents* v. *Commonwealth*, 18 Gratt. 750, 767–771.

THE BAR EXAMINATION AT STAUNTON.—The examination of candidates for admission to the bar was held by the Court of Appeals at Staunton, September 10, 1897. Fifteen candidates presented themselves, of whom six were rejected. We publish below a copy of the questions submitted. They seem to be less elementary, and therefore somewhat more difficult, than heretofore. We are glad to see that the court is keeping up the standard, though we believe the learned judges are inclined to be more lenient than the bar had expected. Our medical brethren are much more severe. A rigid examination keeps no good man out of the profession—it merely incites to greater diligence and better preparation, resulting in life-long benefit to the candidate himself. Nor can its effect upon the general tone of the profession be over-estimated. Shysters and tricksters, as a rule, are not found amongst lawyers who come to the bar with thorough equipment. Professional ignorance is the chrysalis from which the shyster springs. The lawyer who comes to the bar ill prepared may possibly become a good lawyer, but the chances are that he will not.

The following is a copy of the examination :

1. Who may obtain a license to practice law in this State, and state fully the manner in which such license may be obtained?

2. What law books have you read, and of what does each treat?

3. What is the supreme municipal law of the commonwealths of the United States?

4. What are the three great relations of private life?

5. What are the requisites of an estate by the curtesy and also by dower? Why is a widow not entitled to dower in lands conveyed to her husband as trustee nor in lands sold, but not conveyed by him, before marriage?

6. What contracts of an infant are valid, what voidable, and what void? Give an illustration of each.

7. If money be lent to an infant to purchase necessaries, and it is so expended, can the lender recover it from the infant, and, if so, what is the remedy?

8. A master discharges his servant employed for five years in the middle of the second year without just cause. What are the remedies of the servant and what is he entitled to recover?

9. When are the declarations of an agent or servant admissible as evidence against his principal or master; and when is an agent's knowledge of facts notice to his principal?

10. What are the incidents belonging to an estate in fee simple? What is a base or qualified fee, and what a conditional fee?

11. What is a remainder; what a reversion, and how do they differ from each other?

12. What are conditions precedent and conditions subsequent? Give an illustration of each, and state which is construed strictly, and why.

13. What is meant by the merger of estates? What is meant by title to land?

14. What are the objections to the covenant of general warranty, and why are "English covenants" the better?

15. A authorizes B verbally to sell a tract of land upon certain terms. B makes a contract in writing for the sale upon the terms named and as agent of A signs it. Can the contract be enforced?

16. A makes a conveyance to B and his three children. What interest has B in the land? A devises a tract of land to his daughter for the support of herself and children—What interest has the children in the land?

17. What is an easement; what a license; and are they required to be in writing. Define rent. Define an annuity.

18. What is the nature of, and reason for, the mortgagor's equity of redemption?

19. Can a mortgagee execute a power of sale conferred upon him by the mortgage? Give reasons for your view.

20. When does a power of sale survive the donor of the power?

21. Land is conveyed to A and the purchase price is paid by B. When will a trust be implied in favor of B, and when not?

22. When is it the duty of a trustee in a deed of trust to secure creditors to ask for the aid of a court of equity before selling the trust subject?

23. In what cases does the doctrine of survivorship still exist?

24. In 1848 A conveyed a tract of land to B and his wife jointly. In 1855 B executed a deed to a railroad company for a right of way through the land, but his wife did not unite in it. The railroad company took possession of the right of way under the deed when made and held it until 1890, when B died? Who is entitled to the interest in the land of which B died seized, and what rights did the railroad company acquire by its deed?

25. A executes a deed of trust on his farm to secure a debt due to B. A then sells and conveys a portion of the tract to C, who pays for it. Afterwards A sells and conveys another portion of the tract to D, who pays for it and secures a release from B, the trust creditor, who has a lien upon the whole tract. Afterwards B has that portion of the land not conveyed to C and D sold under his trust and the proceeds are not sufficient to satisfy his debts. Can B have the land conveyed to C subjected to the payment of the residue of his debt? Give reasons for your view.

26. A, an infant, dies seized of lands and personal property acquired by gift from his mother's father. He leaves surviving him his father, a full brother and a half sister (the daughter of his mother). To whom does his estate descend, and in what proportions?

27. Where a party owns property, real and personal, in different States, what law will govern as to the formalities required in the execution of his will by which he disposes of the property?

28. For what purpose and to what extent may parol evidence be received in construing a will?

29. A devises real estate to B, a married woman, for life, at her death to be equally divided among all her children, to be held by them during their lives, and at their death to their children. What estate does B's children take in the property devised?

30. When is a negotiable note payable "on demand" due, and within what time must payment be demanded in order to fix the liability of the endorsers?

31. When and for what purpose may a local custom or usage be shown?

32. A executes his two negotiable notes payable to B, one based upon an usurious and the other upon a gambling consideration; both before maturity pass into the hands of an innocent holder for value. Can A make defence to the notes or either of them, and, if so, why?

33. A, a laboring man, after he becomes insolvent, insures his life and pays the premiums on the policy in part out of the proceeds of property liable for his debts and in part out of his wages, which were less than $50.00 per month. What interest, if any, have his creditors in the proceeds of the policy after his death?

34. What is equity, and what are the essential differences between courts of law and courts of equity?

35. What is meant by the term subrogation? Is it a legal or equitable right, and in whose favor may the right be enforced?

36. Upon whom may process against, or notice to a corporation, be served?

37. When does a deed of trust executed by a corporation inure to the benefit of all its creditors?

38. State when private property may be lawfully taken without the consent of the owner, and give proceedings by which it may be done by a railroad company.

39. When and how must objection be made when an action is not brought in the proper county?

40. What is the office of a demurrer?

41. How many pleas to a declaration can be pleaded at common law, and how many under our statute? How many replications may be filed to each plea?

42. What practice does the Code authorize when, during the progress of a trial, it appears that there is a variance between the allegation and proof?

43. What is a demurrer to evidence and its effect upon the party demurring?

44. When and how may errors to a judgment or decree be corrected without writ of error or appeal?

45. How many kinds of bills in equity are there, and for what purpose is each employed?

46. Name some of the rules to be observed in the construction of statutes?

47. What disabilities prolong the period of the statute of limitations, and what is the maximum period to which it may be prolonged?

48. How many kinds of homicide are there? Give an illustration of each.

49. When is killing of a person justifiable; when excusable?

50. By whom can the writ of *habeas corpus* be issued; when is it returnable, and for what purpose is it used?

Pledge: I hereby certify that I have neither given nor received aid in this examination.

FOREIGN CORPORATIONS—VENUE OF SUITS CONCERNING INTERNAL MANAGEMENT.—In *Madden* v. *Penn Electric Light Co.* (Pa.), 37 Atl. 817, it is held that a suit brought by stockholders to prevent the corporation from making a lease of certain of its property and franchises, on the ground of insufficient rental, whereby the value of the stock would be depreciated, can only be maintained in the home State of the corporation; and such a suit cannot be maintained in another State though the property and franchises in question are situated there. The court enforced the general rule that while the courts of one State have general jurisdiction over all property within its borders, though belonging to a foreign corporation, and to enforce contracts made and liabilities incurred by it, there is no jurisdiction in matters of internal management. This must be left to the local laws and jurisdiction of the State of its domicile. A similar ruling was made in *Mining Co.* v. *Field*, 64 Md. 154 (20 Atl. 1039); *Moore* v. *Silver Valley Mining Co.*, 104 N. C. 534 (10 S. E. 679); *New Haven etc. Co.* v. *Linden etc. Co.*, 142 Mass. 349. The reason of the rule is thus stated by Judge Thompson: "This rule rests partly on jurisdictional grounds, and partly on grounds of public policy and expediency. It is indispensable, in such an action, that the corporation should be made a party in its corporate name and character. This reason alone, in many cases, drives the stockholders to the forum of the State of the corporation, because service of process cannot be made upon the corporation in other jurisdictions. It also rests upon a consideration of the inexpediency of opening the doors of the courts of the State to litigations in respect of rights depending upon transactions taking place outside of the State and governed by foreign law. It rests upon the further consideration that, in many cases, by reason of the fact of the property of the corporation being situated outside the State, it will be impossible for the court to effectuate its judgment, if it should render any." 6 Thompson on Corp. 8011.

NOTICE BY REGISTRY.—While it is common to say that registry of a deed or other instrument authorized by law to be recorded is "notice to all the world," or is notice to all creditors and subsequent purchasers, yet this is true only in a limited sense. It is certainly notice to all the world, so far as is necessary for the protection of the grantee or beneficiary in the recorded instrument and his privies, but it is equally certain that it is not constructive notice to anybody for any other purpose. For example, A leases to B a house and lot, title to which is in C, by a duly recorded conveyance—the lessee being fraudulently induced by the assumed lessor to believe that title was in himself. Certainly in an action by the lessee against the lessor, for damages for breach of implied warranty of title, the latter could not bring home to the plaintiff notice of the real situation, by proof that C's title was of record. So where there is a duly recorded mortgage executed by A on his real estate, notice thereof would not be imputed to B, to whom the property is subsequently sold by A, with representations of title, so as to estop B from

rescinding for defect of title. As between himself and his grantor, he may rely upon the representation of the latter, and will not be bound with notice of the registered title. Mr. Justice Sharswood characterizes the general statement of the rule that registry is notice to all the world as "too broad and unqualified. It is constructive notice only to those who are bound to search for it; thus subsequent purchasers and mortgagees, and perhaps all others who deal with or on the credit of the title in the line of which the recorded deed belongs. But strangers to the title are in no way affected by it." *Maul* v. *Rider*, 59 Pa. St. 167, 171. The authorities are collected in 1 Devlin on Deeds, 712. The statutes of registry in Virginia do not in express terms declare that registry shall be notice to anybody. They merely provide that unless the deed, contract or other instrument shall be recorded, it shall be void "as to subsequent purchasers for value without notice and to creditors." Va. Code, secs. 2463, 2464, 2465. The purpose of these sections is to protect purchasers and creditors, therefore, and no other interests—and the registry is notice to the world only so far as may be necessary for the protection of these. We are not aware that the precise question we are discussing has arisen in Virginia, though the construction placed upon our registry laws through a long line of decisions would lead to no other conclusion.

LIBEL.—The principle that in order to justify a defamatory publication it is not sufficient to prove merely that the publication is true, but that the defamatory matter to which the publication gives currency is itself true, is well illustrated in *Dement* v. *Houston Printing Co.* (Texas), 37 S. W. 985. The defendant had published the following as a news-item: "C. G. Dement, formerly of Washington county, and who was at one time a Baptist preacher, was jailed last night on a charge of horse-stealing. His son-in-law, Joe Holston, was jailed as *particeps criminis*. The horses alleged to have been stolen were the property of J. C. Hillsman, of Ledbetter." The defendant pleaded the truth of the publication. The lower court found that the facts stated in the publication, viz., that the plaintiff had been put in jail on the charge of horse-stealing, were true, and held that this was a sufficient justification. This ruling was reversed on appeal, the appellate court laying down the principle, which seems to be the approved doctrine, that the real issue, upon a plea of the truth of the libel, was not whether the arrest had been made, on the charge mentioned, but whether the charge itself was true. In the course of its opinion the court said:

"The judgment of the lower court is based solely upon its finding that the publication made by the defendant was true, and the question thus presented is whether or not the justification pleaded was sustained by proof that the charge had been in fact made, as published, without proof that the charge was true. The law is clear upon the subject. One who publishes a defamatory statement made by another, cannot justify by proving that the other made the statement. By publishing it, he becomes responsible for his own act in doing so, and if he seeks to justify, he must prove the truth of the charge published. Townshend, Slander and Lib. 210–212; Odgers, Slander and Lib. 161, 164, 172; Cooley on Torts, 220."

The question whether the publication were not privileged did not arise in the case, as there was no warrant of arrest or other proceedings in court. Other cases are collected in note to 15 Am. St. Rep. 342.

GAMING—IS FOOTBALL ILLEGAL?—Now that the season of football and long hair is beginning, this question is a pertinent one. Section 3818 of the Virginia Code reads as follows:

"If any person bet or play at any such table, bank or wheel of fortune as is mentioned in sec. 3815, or if at any ordinary, race-field or other public place, he play at *any game* except *billiards, bowls, chess, backgammon, draughts, or a licensed game*, or bet on the sides of those who play, he shall be fined thirty dollars, and shall, if required by the court, give security for his good behavior, or, in default thereof, he may be confined in jail, not exceeding three months."

By Acts 1893–4, p. 781, the privilege is extended to "dominoes." In *Neal's Case*, 22 Gratt. 917, 921–2, Judge Moncure construes this statute as meaning precisely what it says. "According to our view," says the court, "a person is punishable . . . who bets or plays at a faro bank, or a table of the like kind, anywhere, or plays at *any game* except bowls, chess, backgammon, draughts, or a licensed game, at any ordinary, race-field, or other public place, *whether anything be bet or not on the game.*" See also *Purcell's Case*, 14 Gratt. 679; and *Terry's Case*, 2 Va. Cas. 77. In the last case cited, the defendant, who had played cards in a public place, was held guilty under the statute, though there had been no betting whatever. The term "licensed game" doubtless refers to those games which are conducted for profit and for which a license is required under the revenue laws. See Va. Code, sec. 555; Acts 1889–90, pp. 230–1.

As the statute above quoted forbids playing at *any game* in a public place, save those expressly excepted, whether anything be bet or not, and as football is not in the favored class, it seems clearly within the condemnation of the statute. And if football, of course baseball, and tennis, and golf, and polo, and handball—and why not thimble, puss-in-the-corner, fox-and-geese, all-around-the-mulberry-bush, King-William-was-King-George's-son, and frog-in-the-middle?

PENALTY FOR BUYING OR SELLING OFFICE—SECTION 166 OF CODE.—The penalty prescribed by sec. 166 of the Virginia Code for buying or selling a public office, or the deputation thereof, is that both buyer and seller "shall each of them be forever disabled from holding such office."

The Constitution of Virginia provides that "all persons entitled to vote shall be eligible to any office within the gift of the people, except as restricted in this Constitution." Art. III., sec. 2. Section 1 of the same Article prescribes the qualification of voters; namely, all male citizens of the United States, resident here twelve months, etc., save (1) Idiots and lunatics; (2) Persons convicted of bribery in any election, embezzlement of public funds, treason, felony or petit larceny, and (3) Persons who have infringed the anti-duelling laws. Hence, every male citizen, who fulfills the conditions as to residence, and who is not an idiot or a lunatic, who has not been convicted of any of the offenses named, and who has not offended in respect to the anti-duelling laws, is entitled under the Constitution to hold "any office within the gift of the people." And as the legislature cannot abridge the constitutional right to vote (*Pearson* v. *Supervisors*, 91 Va. 322), so it is equally powerless to abridge the right to hold office. Is not the statute, therefore, unconstitutional in so far as it prescribes perpetual disability to hold the office? We understand that this construction has been placed upon it by one of the circuit courts. If this conclusion be correct, how far is the provis-

ion of sec. 163 of the Code, prohibiting Federal office-holders from holding any office of honor, profit or trust under the State government constitutional? Federal office-holders, possessing the proper qualifications, may vote, and if they may vote, why may they not hold office? See 1 Minor (4th ed.), 109. In *Bunting* v. *Willis*, 27 Gratt. 144, a sheriff elect was held to be disqualified by reason of holding a Federal office, but the decision was based upon a special clause in the Constitution (Art VII., sec. 5), prohibiting the sheriff from holding any other office.

Probably the constitutional provision declaring that any person who may vote may also hold office, would be construed as not abrogating the common law rule that one person cannot hold two offices which are incompatible; so that if the Federal and State offices were thus incompatible, doubtless no person would be allowed to hold both. Any other rule would authorize one to hold two incompatible State offices at the same time.

JUDGMENT LIEN—EXPECTANCY.—An interesting question involving the lien of a judgment, is decided in *Re Handy's Estate* (Pa.), 37 Atl. 854. Under the law of Pennsylvania, as under that of Virginia, a judgment is a lien of every kind of equitable as well as legal interest in land, vested in the judgment debtor. The testator devised his property, real and personal, to trustees in trust for his wife for life, with directions to the trustees, after death of the wife, to divide the estate amongst his four children—the division and allotment by the trustees to be recorded in the office of the recorder of deeds. The court, on a previous appeal, construed the will as giving unlimited discretion to the trustees as to the method of division, provided only that each child should receive an equal one-fourth part. Two-thirds of the estate consisted of personal property. The precise question before the court was whether during the life of the widow, life-tenant, a judgment against one of the remaindermen was a lien on any part of his interest in the estate. The court held, very properly as it would seem, that since the trustees were empowered to distribute the estate in such form as they saw fit, and therefore could not be compelled to allot to the judgment debtor any real estate whatever, he could not be said to own any real estate, or any interest therein, unless and until the same should be actually set apart to him. The report of the master, confirmed and adopted by the court, thus states the grounds upon which this conclusion was based: "In Pennsylvania a judgment binds equitable, reversionary, and even inchoate interests, but those interests must be estates in the land; and unless the debtor has an interest in specific real estate which he could himself convey, a judgment against such debtor is not a lien against said real estate. In *Morrow* v. *Brenizer*, 2 Rawle, 188, Chief Justice Gibson said: 'It is supposed that a judgment is a lien on every possible interest in land, whether immediate or remote, actual or contingent. This takes for granted that the legatee had in fact an interest in the land. . . . But it is proper to remark that both the major and the minor are untrue. The interest of a mortgagee, judgment creditor, owner of a legacy charged on land, creditor of an intestate estate, mechanic or material man, or of a preferred creditor under an assignment to trustees (to each of whom the land is debtor), is not the subject of judgment and execution.' Applying these principles, it will be observed that under the will, while the interest of a son is vested, yet that such interest is a general interest in the testator's entire estate, and not in any separate or distinct item thereof. The sole right of the distribu-

tees is, after the death of the widow, to receive something which will amount to one-fourth of the entire estate of the testator, and this is to be worked out by the trustees alone." "Until such allotment," the court said, "he has no vested interest in any part of the land, but a mere possibility or expectation, not the subject of a lien."

In *Young* v. *Young*, 89 Va. 675, it was held that a contingent remainder in real estate was not such an estate as could be attached, and that where the attachment of such an interest was the sole ground of jurisdiction—no personal service having been had on the defendant, who was a non-resident—the judgment in such proceeding was void for want of jurisdiction, and no title passed by a sale thereunder.

TAXATION OF INTERSTATE TRANSPORTATION COMPANIES.—There have been a number of decisions within the past few years which very materially modify the broad rule that no State can tax the business or instrumentalities of interstate commerce, save to the extent of property actually located within its borders. Under this rule, the great corporations which control the transportation of persons, freight and messages in this country—including railroad companies, express, telegraph and sleeping-car companies—have to a large extent escaped the payment of their just proportion of taxation, in the various States through which their several lines extend.

One of the most striking of these decisions is *Pullman Palace Car Co.* v. *Pennsylvania*, 141 U. S. 18. In that case it was held that a tax laid by the State of Pennsylvania on the Pullman Palace Car Company, taking as a basis of assessment such proportion of the entire capital stock of the company as the number of miles over which it ran its cars within the State, bore to the whole number of miles in that and other States over which its cars were run, was an equitable assessment and not contrary to the interstate commerce or any other clause of the Federal Constitution. That is to say, if the total capital stock were $10,000,000; the total number of miles operated were 25,000; and the total number of miles operated in Pennsylvania were 2,500—then the State might legally assess the value of the company's property within its borders at an amount equal to such a proportion of its entire capital ($10,000,000) as the number of miles operated within the State (2,500) bore to the entire mileage operated there and elsewhere (25,000); or, at one-tenth of its entire capital stock—equal to $1,000,000. Mr. Justice Gray, in delivering the opinion of the court, said: "The cars of this company within the State of Pennsylvania are employed in interstate commerce; but their being so employed does not exempt them from taxation by the State; and the State has not taxed them because of their being so employed, but because of their being within its territory and jurisdiction. The cars were continuously and permanently employed in going to and fro upon certain routes of travel If they had never passed beyond the limits of Pennsylvania, it could not be doubted that the State could tax them, like other property within its borders, notwithstanding they were employed in interstate commerce. The fact that, instead of stopping at the State boundary, they cross that boundary in going out and coming back, cannot affect the power of the State to levy a tax upon them. The State having the right, for the purpose of taxation, to tax any personal property found within its jurisdiction, without regard to the place of the owner's domicile, could tax the specific cars which were at a given moment within its borders. The route over

which the cars travel extending beyond the limits of the State, particular cars may not remain within the State; but the company has at all times substantially the same number of cars within the State, and continuously and constantly uses there a portion of its property; and it is distinctly found, as a matter of fact, that the company continuously, throughout the period for which these taxes were levied, carried on business in Pennsylvania, and had about one hundred cars within the State. The mode which the State of Pennsylvania adopted, to ascertain the proportion of the company's property upon which it should be taxed in that State, was by taking as a basis of assessment such proportion of the capital stock of the company as the number of miles over which it ran cars within the State bore to the whole number of miles, in that and other States, over which its cars were run. This was a just and equitable method of assessment; and if it were adopted by all the States through which these cars ran, the company would be assessed upon the whole value of its capital stock and no more."

The same doctrine has been applied to railroad companies (*Pittsburg etc. R. Co.* v. *Backus*, 154 U. S. 429) and to telegraph companies (*Western Union Telegraph Co.* v. *Taggart*, 163 U. S. 1). The principle upon which the assessment is made in these cases is, as explained by Chief Justice Fuller in the next case mentioned below, that "the valuation is not confined to the wires, poles and instruments of the telegraph company; or the roadbed, ties, rails and spikes of the railroad company; or the cars of the sleeping-car company; but included the proportionate part of the value resulting from the combination of the means by which the business was carried on, a value existing to an appreciable extent throughout the entire domain of operation. . . . . The taxation was sustained on the theory that the whole property of the company might be regarded as a *unit plant*, with a *unit value*."

The latest decision on the subject is *Adams Express Co.* v. *Ohio State Auditor*, 165 U. S. 194, affirmed on rehearing in 166 U. S. 185. Here the previous ruling was affirmed, and probably carried a step further. The State of Ohio, by what is known as the Nichols Law, undertook to tax the property of the express companies doing business in that State—the property consisting chiefly of horses and wagons—using as the basis of assessment, not the value which such property represented, when considered merely as so many personal chattels, worth so much in open market, but according to the proportion which the value of such property bore to the value of the entire capital stock of the companies. In other words, the tax was laid as well on the value of good will, franchises, etc.—its intangible property—as on the tangible property. In learned opinions by Mr. Chief Justice Fuller, on the first hearing, and Mr. Justice Brewer, on the rehearing, the court held the statute constitutional. "The burden of the contention of the express companies," says Mr. Justice Brewer, "is that they have within the limits of the State certain tangible property, such as horses, wagons, etc.; that that tangible property is their only property within the State; that it must be valued as other like property, and upon such valuation alone can taxes be assessed and levied against them. But this contention practically ignores the existence of intangible property, or at least denies its liability for taxation. In the complex civilization of to-day a large proportion of the wealth of a community consists in intangible property, and there is nothing in the nature of things, or in the limitations of the Federal Constitution, which restrains a State from taxing at its real value such intangible property. . . . . To ignore this intangible property, or

to hold that it is not subject to taxation at its accepted value, is to eliminate from the reach of the taxing power a large portion of the wealth of the country. Now, whenever separate articles of personal property are joined together, not simply by a unity of ownership, but in a unity of use, there is not infrequently developed a property, intangible though it may be, which in value exceeds the aggregate of the value of the separate pieces of tangible property. Upon what theory of substantial right can it be adjudged that the value of this intangible property must be excluded from the tax lists, and the only property placed thereon the separate pieces of tangible property? . . . . . The Adams Express Company has, according to its showing, in round numbers, $4,000,000 of tangible property, scattered through different States, and with that tangible property thus scattered transacts its business. By the business which it transacts, by combining into a single use all these separate pieces and articles of tangible property, by the contracts, franchises and privileges which it has acquired and possesses, it has created a corporate property of the actual value of $16,000,000. Thus, according to its figures, this intangible property, its franchises, privileges, etc., is of the value of $12,000,000, and its tangible property of only $4,000,000. Where is the *situs* of this intangible property? Is it simply where its home office is, where is found the central directing thought which controls the workings of the great machine, or in the State which gave it its corporate franchise; or is that intangible property distributed wherever its tangible property is located, and its work is done? Clearly, as we think, the latter. Every State within which it is transacting business and where it has property, more or less, may rightfully say that the $16,000,000 of value which it possesses springs not merely from the original grant of corporate power by the State which incorporated it, or from the mere ownership of the tangible property, but it springs from the fact that that tangible property it has combined with contracts, franchises and privileges into a single unit of property, and this State contributes to that aggregate value not merely the separate value of such tangible property as is within its limits, but its proportionate share of the value of the entire property."

The practical result of the adoption of this system of taxation is shown in the fact that for the year 1895 the value of the tangible property of the Adams Express Company in the State of Ohio was, in round numbers, $68,000; it was actually assessed at $533,000, and the assessment sustained.

To find there is a law by which these great corporations may be compelled to pay taxes upon the full value of their properties, regarded as profit-producing plants, with a unit value, just as the private citizen must pay upon his property, valued at what it will bring in the market, naturally disturbs representatives of great corporate interests. "That every State," say counsel in their petition for a rehearing in the Express Cases, "will resort to this new device, now that it has been pronounced legal, must of course be regarded as certain. A proper view of their own interests would require them to do so. The complaints of the citizens in each State at the burdens of taxation imposed upon them, growing louder and louder every year as that burden increases, will compel all assessing officers to impose as much of the burden as possible upon those whose complaints they can afford to disregard. What limit indeed can be placed upon the extent to which the people of a State will compel foreigners to bear the burden of their expenditures, if they have neither war nor judicial interference to apprehend? The

device of Ohio was immediately imitated by Indiana and Kentucky, even before its validity was tested. That other States did not follow it is imputable only to the circumstance that they believed this court would promptly condemn it. But immediately upon announcement of this decision, the legislative machinery has been started; and while these words are being written intelligence has come that bills for similar schemes have been introduced into the legislature of more than one State."

We hope the prediction of counsel will be verified in Virginia—always in the forefront as she is when there is any taxing to be done. We hope to see introduced into the Virginia legislature a proper bill, modeled after the Nichols law, abundantly securing such corporations against injustice, but requiring each of them to contribute to the revenues of the State—whose powers, in the language of Mr. Justice Brewer, "are invoked to protect its property from trespass and secure it in the peaceful transaction of its widely dispersed business"—its proper proportion of taxes, according to the real value of its property interests, whether tangible or intangible.

A justice of the peace, in conversation with his pastor, with whom he was "in good and regular standing," was ambitious to rival the pulpit in the use of high-sounding words. He had once heard the word "confab," and aimed at utilizing it. But his remark was, "My dear sir, I have always enjoyed a good social *crim. con.*"—*Leading in Law and Curious in Court.*

In a murder case in one of the wire grass counties of Virginia, there had been some difficulty in completing the panel. After eleven had been sworn in, there came up a lank, cadaverous-looking fellow, with pantaloons fastened by a single suspender. The judge said: "Juror, look upon the prisoner. Prisoner, look upon the juror." He scanned the prisoner intently, and turning to the judge said: "Yes, jedge, I think he's guilty."—*Ex.*

Examiner: "What do you understand by the term 'socage'?"

Examinee: "Well, I should say it meant an age from one to three years, although older people sometimes wear them."

Her name was Sniggs—it didn't suit
  Her rich, aesthetic nature,
And so she thought she'd have it changed
  By act of legislature.
She sought a limb—a legal man,
  With lots of subtle learning,
And unto him she did confide
  Her soul's most faithful yearning.
He heard her through, he asked her wealth,
  He pondered o'er her story,
And then he said would consult
  His volumes statutory.
She sighed and rose, he took her hand
  And sudden said, "How stupid!
I did forget the precedent
  Of *Hymen* v. *Cupid!*
Just substitute *my* name for yours."
  The maiden blushed and faltered,
But in two weeks she took her name
  To church and had it altared.

—*Cleveland Sun.*